

EXECUTIVE ORDER

DATE July 17,2012	
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ALISON LUNDERGAN GRIMES SECRETARY OF STATE COMMONWEALTH OF KENTUCKY BY

Secretary of State Frankfort Kentucky 2012-587 July 17, 2012

RELATING TO ESTABLISHMENT OF THE KENTUCKY HEALTH BENEFIT EXCHANGE

WHEREAS, the Patient Protection and Affordable Care Act (P.L. 111-148) as amended by the Health Care and Education Reconciliation Act (P.L. 111-152) (hereinafter the "Affordable Care Act") and the regulations promulgated there under require the establishment of an American Health Benefit Exchange ("Exchange") for every state in America for purposes of:

- Facilitating the purchase and sale of qualified health plans in the individual market in the Commonwealth;
- Assisting qualified small employers in the Commonwealth in facilitating the enrollment of their employees in qualified health plans offered in the small group market;
- Providing one-stop shopping by helping eligible individuals enroll in qualified health plans offered through the Exchange or coverage through other federal or state health care programs including Medicaid and KCHIP;
- 4. Enabling eligible individuals to receive premium tax credits and cost-sharing reductions and eligible small businesses to receive tax credits; and

WHEREAS, on June 28, 2012, the United State Supreme Court affirmed the constitutionality of such portions of the Affordable Care Act as to warrant the establishment of an Exchange; and

WHEREAS, pursuant to Affordable Care Act § 1321(c), if a state does not establish its own Exchange, the United States Department of Health and Human Services ("HHS") shall establish and operate such Exchange within the state; and



EXECUTIVE ORDER

Secretary of State Frankfort Kentucky 2012-587 July 17, 2012

WHEREAS, the Commonwealth of Kentucky is best positioned to:

- Understand the impact of operating an Exchange within Kentucky's commercial insurance market;
- Consider the unique regional and economic needs of the Commonwealth's individual and small business health insurance markets;
- 3. Account for and understand the diversity of its population;
- 4. Ensure coordination and integration of eligibility determinations and enrollment with the State Medicaid program;
- 5. Develop cooperative working relationships with insurers, agents, advocates, health care providers, and other business partners; and
- 6. Determine the benefits provided to enrollees in the Exchange, the criteria to participate in the Exchange, the rules for marketing products, and the operations of the Small Business Health Options Program ("SHOP"); and

WHEREAS, development and operation of an Exchange in Kentucky will be funded entirely with federal funds until January 1, 2015, at which time the operations of the Exchange will be wholly funded from revenues generated by the Exchange; and

WHEREAS, interest groups representing employers, health insurers, insurance agents, health care providers and health care advocates support a State established Exchange and have expressed that the Commonwealth should not allow the federal government to operate the Exchange for Kentucky; and

WHEREAS, the Affordable Care Act requires that states that plan to operate their own health care exchanges must adequately demonstrate to HHS, preliminarily by November 16, 2012 and finally by January 1, 2013, that they will be fully capable to operate an exchange effective January 1, 2014:



EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2012-587 July 17, 2012

NOW, THEREFORE, I, Steven L. Beshear, Governor of the Commonwealth of

Kentucky, by virtue of the authority vested in me by the Constitution of the

Commonwealth of Kentucky and KRS 12.028, do hereby Order and Direct as follows:

- I. Office of the Kentucky Health Benefit Exchange
 - a. The Office of the Kentucky Health Benefit Exchange ("Office") is hereby created and established within the Cabinet for Health and Family Services. The Office of the Kentucky Health Benefit Exchange shall be headed by an executive director to be appointed by the Governor. The Office shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.
 - b. The Division of Health Care Policy Administration is hereby established within the Office of the Kentucky Health Benefit Exchange. The Division of Health Care Policy Administration shall be headed by a director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.
 - c. The Division of Information Systems is hereby established within the Office of the Kentucky Health Benefit Exchange. The Division of Information Systems shall be headed by a director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.
 - d. The Division of Financial and Operations Administration is hereby established within the Office of the Kentucky Health Benefit Exchange. The Division of Financial and Operations Administration shall be headed by a director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.
 - e. The Division of Communication and Outreach is hereby established within the Office of the Kentucky Health Benefit Exchange. The Division of Communication and Outreach shall be headed by a director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.
- II. The Office shall review and discuss issues with the Exchange Advisory Board ("Advisory Board or Board"). The board shall be appointed by the Governor and composed of the following eleven (11) members that have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or



EXECUTIVE ORDER

Secretary of State Frankfort Kentucky 2012-587 July 17, 2012

health policy issues related to the small group and individual markets and the uninsured.

- a. Commissioner of the Department for Medicaid Services or the Commissioner's designee;
- b. Commissioner of the Department of Insurance or the Commissioner's designee;
- c. Commissioner of the Department for Behavioral Health and Developmental and Intellectual Disabilities or the Commissioner's designee;
- d. One representative of insurers with a health line of authority and that offers health benefit plans in the Commonwealth;
- e. One representative of insurance agents licensed to sell health insurance in the Commonwealth;
- f. One representative for non-facility based health care providers licensed in the Commonwealth;
- g. One representative for facility based health care providers licensed in the Commonwealth;
- h. One representative of small employers doing business in the Commonwealth;
- i. One representative of an individual purchaser of health benefit plans in the Commonwealth; and
- j. Two (2) consumer representatives.

All members other than those who serve by virtue of their offices shall be selected by the Governor from a list of names submitted by any interested parties. The Governor may request the submission of additional names.

- III. The Governor shall appoint a Chair for the Advisory Board.
- IV. Membership on the Board representing non-state agencies shall initially be for a staggered term limit for a two (2) or three (3) year period as designated by the Governor to ensure that experienced members are maintained on the Board at all times.
- V. The Board may establish advisory sub-committee(s) consisting of consumers and other stakeholder groups or interested parties to study specific policy issues and advise the board.
- VI. The Office shall facilitate enrollment in health coverage and the purchase and sale of qualified health plans in the individual market.
- VII. The Office shall take such actions necessary to enable eligible individuals to receive premium tax credits and cost-sharing reductions and to enable eligible small businesses to receive tax credits, in compliance with all applicable federal and state laws and regulations.



EXECUTIVE ORDER

Secretary of State Frankfort Kentucky

2012-587 July 17, 2012

- VIII. The Office may enter into contracts and other agreements with appropriate entities, including but not limited to federal, state, and local agencies, as permitted under 45 CFR§155.110, to the extent necessary to carry out its duties and responsibilities, provided that such agreements incorporate adequate protections with respect to the confidentiality of any information to be shared.
- IX. The Office shall, at a minimum, carry out the functions and responsibilities required under § 1311 of the Affordable Care Act to implement and comply with federal regulations issued under § 1321(a) of the Affordable Care Act, including the submittal of an application for approval of Exchange certification.
- X. The Office shall pursue available federal funding for development and operation of the Exchange until January 1, 2015.
- XI. The Office shall have the authority to promulgate administrative regulations in accordance with KRS 13A, as necessary to carry out the duties and responsibilities of the Exchange.
- XII. 45 CFR §155.110 requires that all entities that operate a Health Benefit Exchange must have in place and make publicly available a set of guiding governance principles that include ethics, conflict of interest standards, accountability and transparency standards, and disclosure of financial interests. As a state agency, the Kentucky Health Benefit Exchange is subject to, inter alia:
 - a. The Kentucky Open Records Act, KRS 61.870-61.884;
 - b. The Kentucky Open Meetings Law, KRS 61.800 to 61.850;
 - c. The Kentucky Model Procurement Code, KRS 45A; and
 - d. The Kentucky Executive Branch Code of Ethics, KRS 11A,

which provisions shall satisfy the aforementioned requirement for guiding governance principles.

- XIII. The Office shall regularly consult with stakeholders on an on-going basis as referenced in 45 CFR §155.130.
- XIV. The Office shall not establish procedures or rules that conflict with or prevent the application of the Affordable Care Act.
- XV. Nothing in this Order shall be construed to duplicate, preempt, supersede, limit or otherwise restrict the statutory authority, duties and functions of the Department for Medicaid Services and the Kentucky Department of Insurance and the administrative regulations promulgated thereunder, excepted as provided for herein.



EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2012-587 July 17, 2012

XVI. The Cabinet for Health and Family Services, the Public Protection Cabinet, the Finance and Administration Cabinet, the Office of State Budget Director, the Personnel Cabinet, and other affected state agencies shall take all necessary actions to effectuate this order, and expedite the Office's ability to perform those functions necessary to carry out requirements and serve the goals of the Affordable Care Act.

STEVEN L. BESHEAR, GOVERNOR

Commonwealth of Kentucky

ALISON LUNDERGAN GRIMES

Secretary of State

KENTUCKY HEALTH BENEFIT EXCHANGE

REORGANIZATION PLAN

The Patient Protection and Affordable Care Act (P.L. 111-148) as amended by the Health Care and Education Reconciliation Act (P.L. 111-152) (hereinafter the "Affordable Care Act") and the regulations promulgated there under require the establishment of an American Health Benefit Exchange ("Exchange") for every state in America. The purpose of the Exchange is to facilitate the purchase and sale of qualified health plans in the individual markets, assist qualified small employers in facilitating the enrollment of employees in qualified health plans offered in small group markets, provide one-stop shopping by helping eligible individuals enroll in qualified health plans offered through the Exchange or coverage through other federal or state health care programs including Medicaid and KCHIP and enabling eligible individuals to receive premium tax credits and costsharing reductions and eligible small businesses to receive tax credits.

On June 28, 2012, the United State Supreme Court affirmed the constitutionality of such portions of the Affordable Care Act as to warrant the establishment of an Exchange and, therefore, pursuant to Affordable Care Act § 1321(c), if a state does not establish its own Exchange, the United States Department of Health and Human Services ("HHS") shall establish and operate such Exchange within the state. Because the Commonwealth of Kentucky is best positioned to understand the impact of operating an Exchange within Kentucky's commercial insurance market, this Executive Order establishes the Office of the Kentucky Health Benefit Exchange. It also creates the Division of Health Care Policy Administration, Division of Information Systems, Division of Financial and Operations Administration, and the Division of Communication and Outreach. The Office shall review and discuss issues with the newly created Exchange Advisory Board ("Advisory Board or Board"). The board shall be appointed by the Governor and composed of members that have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues related to the small group and individual markets and the uninsured. The organizational entities referenced herein shall be attached to the Cabinet for Health and Family Services for staff and administrative purposes.

This reorganization is for administrative purposes and will result in the hiring of additional employees and acquiring office space and facilities. However, because operation of the Exchange will be funded entirely with federal funds until January 1, 2015, at which time the operations of the Exchange will be wholly funded from revenues generated by the Exchange, the reorganization will not result in any net increased expenditures to Kentucky State Government.